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UNITED STATES OF AMERICA

16 UNITED STATES DISTRICT COURT

17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 No. CR 22-482-GW

20 Plaintiff,

21 GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MEMORANDUM RE  
RESTITUTION

22 v.

23 JERRY NEHL BOYLAN,

24 Hearing Date: July 11, 2024

Defendant.

25 Hearing Time: 10:00 a.m.

26 Location: Courtroom of the  
Hon. George H. Wu

27 Plaintiff United States of America, by and through its counsel  
28 of record, the United States Attorney for the Central District of  
California and Assistant United States Attorneys Mark Williams,  
Alexander Robbins, Matthew O'Brien, Brian Faerstein, and Juan

Rodriguez, hereby files this response to the Defense's Memorandum Re Restitution ("Memorandum" or "Mem."),<sup>1</sup> to address misrepresentations the defense continues to make regarding the causation standard for 18 U.S.C. § 1115 (commonly referred to as "Seaman's Manslaughter") set forth in the jury instructions at trial.

In its Memorandum, the defense repeatedly and misleadingly claims that the jury instructions given at trial contained only a proximate cause, but not a "but-for, or actual, cause," requirement, and the government "conceded they would be unable to prove but-for cause at trial." (Mem. at 1, 2, 3, 4.) The defense made similar claims in its motion to dismiss the indictment filed less than three days before trial (see Dkt. No. 261), and in its recent motion for bail pending appeal (see Dkt. No. 473).

As the government has repeatedly explained -- most recently in its opposition to defendant's bail motion (Dkt. No. 481 ("Bail Opposition" or "Bail Opp.") at 13-21) -- the defense is wrong.

In brief, the jury instructions for Seaman's Manslaughter appropriately contained both an "actual cause" (also referred to as "cause-in-fact") and a "proximate cause" requirement. The defense inexorably conflates "but-for" cause with "actual cause," when they are not one and the same. (Bail Opp. at 15-18.) "But-for" cause is a type of "actual cause," but there are other types of actual cause, such as the "substantial factor" or "substantial part" standard that was adopted by the Ninth Circuit for involuntary manslaughter in

<sup>1</sup> The defense filed its Memorandum under seal yesterday and it has yet to be docketed. (See Dkt. No. 480 (Notice of Manual Filing).) Although the government and defense filed their respective restitution positions under seal, the government files this response on the public docket as it does not address any of the sensitive information that justified the sealing of the prior filings.

1       United States v. Main, 113 F.3d 1046, 1050 (9th Cir. 1997), which  
 2 remains binding precedent. (Bail Opp. at 15-18.) The Main causation  
 3 standard (including both actual and proximate cause) was adopted,  
 4 verbatim, in Ninth Circuit Model Criminal Jury Instruction 16.4  
 5 ("Manslaughter-Involuntary"). And the Court incorporated that  
 6 standard, verbatim, in its jury instructions here. (See Dkt. No. 320  
 7 at 4; Bail Opp. at 16-17.) The government thus proved both actual  
 8 cause and proximate cause at trial.<sup>2</sup> (Bail Opp. at 17-18.) As the  
 9 government further explained in its Bail Opposition, there would be  
 10 no legal or rational basis for adding an incorrect and redundant  
 11 "but-for" cause requirement (*i.e.*, a second actual cause requirement)  
 12 on top of the governing standard from Main. (Id. at 18-21.)

13       The defense's continuing claim that the government "conceded  
 14 that it 'did not allege nor can it prove 'actual cause' in this  
 15 case'" (Mem. at 3 (selectively quoting Dkt. No. 246 at 21)), is thus  
 16 both nonsensical and irrelevant. The government proved actual (and  
 17 proximate) causation, as required. The defense's claim also is based  
 18 on a misleading and selective quotation from the parties' disputed  
 19 jury instructions filing, as the government explained in its Bail  
 20 Opposition (Bail Opp. at 21 n.14), and in its opposition to  
 21 defendant's motion to dismiss (Dkt. No. 270 at 8-9). The Court  
 22 agreed, denying defendant's motion to dismiss and rejecting the  
 23 defense's argument regarding the government's purported concession:  
 24 "You keep on saying that. I don't think the government said it could

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25       <sup>2</sup> As the government explains in its Bail Opposition, even though  
 26 Main, Model Instruction 16.4, and the Court's instruction at trial  
 27 use the overall term "proximate cause" to define the causation element,  
 28 the standard nonetheless contains both actual cause ("substantial  
 part") and proximate cause ("reasonably probable consequence"). (See  
 Bail Opp. at 17.)

1 not prove the but for element, *per se*, but it wasn't the applicable  
2 standard." (Dkt. No. 359 (10/24/23 Trial Tr.) at 23:6-8.)

3 The defense now carries forward its conflation of "actual" and  
4 "but-for" causation, as well as its erroneous claim about the  
5 government's alleged concession, into the restitution context. The  
6 Court once again should reject the defense's distortion of the law  
7 and the record.

8 Dated: July 9, 2024

Respectfully submitted,

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13 */s/ Brian Faerstein*  
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